

FILED

NOV 15 2005

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION


CLERK

TONY KENYON; ERIC JAMES QUEEN;
TONY R. HARRISON; RICKY L. BYRD;
ALAN W. WALTHER; MICHAEL R.
DeBOER; STEVE BRANDNER;
DEREK KOKESH; TERRY O'NEAL;
BRIAN WERNER; JOSHUA REDD;
KYLE VAN ZEE; JAMES WHITTEMORE;
KENNY BEUS; TONY D. SCHULTZ;
MICHAEL DEAN SMITH; THOMAS
DALTON; VICTOR H. PINEDA CORNEJO;
ROBBIE HENNIS; ROBERT KLEEN;
DONROY GRASS; ALAN L. RED WILLOW;
BRUCE KUPSEN; KELLY CRAYOE;
MELVIN TURNER; STEVEN HURLEY;
WILLIAM LEITH; KENNETH MANNING;
DAVID WREN; DENNY RODRIGUEZ;
ELI WHITE; DEVIN TARRANT;
MICHAEL BUTNER; LESLIE PAUL RABA;
RYAN WOLF; JACK NORTH;
MICHAEL HORST; GLEN MEYER;
SAMSON GRANNEMAN; PAUL WOOD;
DAVID THEEL; RANDY L. ANDERSON;
JOHN PERKINS; GERALD YOUNG;
ROBERT RYE; ANDREW BULLER;
WILL BAKER; CHRIS SNOW;
SHELDON LITTLE EAGLE; JR ZULKER;
ZACHARY T. ARVIN; and
LAVAUGHN FOSTER;

Plaintiffs,

vs.

WARDEN DOOLEY,

Defendant.

CIV. 05-4150

ORDER

Plaintiff Tony Kenyon filed a complaint and 51 other inmates signed as "Additional Plaintiffs." Pursuant to Boriboune v. Berge, 391 F.3d 852 (7th Cir. 2004) and Hubbard v. Haley, 262 F.3d 1194, (11th Cir. 2001) plaintiffs are given this warning notice.

It appears the claims of all plaintiffs are appropriate for joinder under Federal Rule of Civil Procedure 20. Tony Kenyon is the only plaintiff who has filed the in forma pauperis documentation. "Additional Plaintiff" Kenneth Manning (illegible, see Doc. 7 and signature #27 on the Additional Plaintiffs Attachment) has moved withdraw as a plaintiff (Doc. 7), as has "Additional Plaintiff" Tony R. Harrison (Doc. 4). The clerk of court has written all plaintiffs advising that they must pay a \$250 filing fee (Doc. 3). Plaintiff Tony Kenyon has by a separate Order been granted in forma pauperis status. Before this case is screened pursuant to 28 U.S.C. § 1915(e)(2) plaintiffs are given this warning and opportunity to drop out of the lawsuit. Each plaintiff is obligated to pay the \$250 filing fee. That is to say, there are as many \$250 filing fees as there are plaintiffs, as distinguished from one \$250 filing fee shared by the plaintiffs. Also, there is a risk of being held accountable for sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure and there is the risk of having the case count as a strike under 28 U.S.C. § 1915 for co-plaintiffs claims. Now, therefore, the following WARNING NOTICE is given:

1. You will be legally responsible for knowing precisely what is being filed in the case on your behalf and the representations made in those filings. Federal Rule of Civil Procedure 11(c) provides sanctions can be imposed for violating Rule 11(c).
2. You will incur a strike if the action is dismissed as frivolous, malicious or for failure to state a claim upon which relief can be granted. 28 U.S.C. § 1915(g) provides that a prisoner who has had three cases dismissed (three strikes) for the reasons mentioned in the previous sentence cannot bring a civil action or appeal unless the prisoner is in imminent danger of serious physical injury.
3. No matter whether this case is dismissed or allowed to proceed after screening, you will be required to pay the filing fee of \$250, either in installments or in full, depending on whether you qualify for indigent status.

It is, therefore,

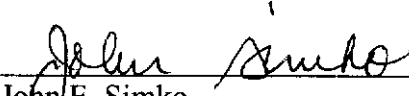
ORDERED that you advise not later than December 16, 2005 whether you want to continue as a plaintiff in this case. If you do wish to continue as a plaintiff, then you must either file the in forma pauperis documents which previously have been provided, or can be provided upon request, to you by the clerk of court, or you must immediately pay the full filing fee. If you opt not to continue as a plaintiff in this case, or if you do not respond to this ORDER, then a REPORT AND RECOMMENDATION will be made to the district judge to dismiss you as a plaintiff in this case. If you opt to continue as a plaintiff in this case but fail to pay the filing fee in full by December 16, 2005, or fail to file the in forma pauperis application and supporting documents by December 16, 2005 then it will be REPORTED AND RECOMMENDED that you should be dismissed as a plaintiff in this case.

It is FURTHER ORDERED that this case will be screened pursuant to 28 U.S.C. §1915(e)(2) after December 16, 2005.

It is FURTHER ORDERED that the motions to withdraw filed by Tony R. Harrison and Kenneth Manning (Docs. 4 and 7) are GRANTED.

Dated this 15th day of November, 2005.

BY THE COURT:



John E. Simko
United States Magistrate Judge

ATTEST:

JOSEPH HAAS, CLERK

By: Sharon Luro, Deputy